
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

KWHUN JOHNSON,

Plaintiff,

versus

FBOP,

Defendant.

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CIVIL ACTION NO. 1:18-CV-391

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Plaintiff, Kwhun Johnson, an inmate formerly confined at USP Pollock, proceeding *pro se*, filed this *Bivens*-type action¹ against the Federal Bureau of Prisons.

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) as plaintiff did not pay the initial partial filing fee as ordered.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Plaintiff filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

¹ *See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

In his objections, plaintiff argued he sent proof that he was indigent and could not pay the initial partial filing fee of \$21.67 as ordered. The original application to proceed *in forma pauperis* included a certified income trust statement which showed plaintiff's average deposit for the 6 month period was \$108.33 (docket entry no. 13). Twenty percent of \$108.33 is \$21.67. Plaintiff provided no additional certified income trust statement showing his balance had changed. Regardless, on January 9, 2019, plaintiff notified the Court of an address change which showed he had been released from prison (docket entry no. 22). On May 16, 2019, this Court ordered plaintiff to file an application to proceed *in forma pauperis* for non-prisoners (docket entry no. 23). The Order also instructed the Clerk of Court to mail plaintiff a copy of the application. Despite ample time to do so, plaintiff has yet to file a new application to proceed *in forma pauperis* for non-prisoners.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **PARTIALLY ADOPTED**, to the extent it recommends dismissal. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

Signed this date

Jul 15, 2019



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE